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**FOREIGN CLAIMS SETTLEMENT COMMISSION
AUTHORIZATION**



HEARING
BEFORE THE
SUBCOMMITTEE ON
ADMINISTRATIVE LAW AND GOVERNMENTAL
RELATIONS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
FIRST SESSION
ON
FOREIGN CLAIMS SETTLEMENT COMMISSION AUTHORIZATION

FEBRUARY 23, 1983

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FOREIGN CLAIMS SETTLEMENT COMMISSION AUTHORIZATION

WEDNESDAY, FEBRUARY 23, 1983

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS, COMMITTEE ON THE JUDICIARY, *Washington, D.C.*

The subcommittee met at 9:40 a.m. in room B352 of the Rayburn House Office Building; Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall and Frank.

Staff present: William P. Shattuck, counsel; James Wade Harrison, assistant counsel; James B. McMahon, associate counsel; and Florence McGrady, legal assistant.

Mr. HALL. The Subcommittee on Administrative Law and Governmental Relations will come to order. We have as our first witness today Mr. David Rogers, General Counsel for the Foreign Claims Settlement Commission. Mr. Rogers, we are happy to have you with us, and if you would proceed, please.

TESTIMONY OF DAVID ROGERS, GENERAL COUNSEL, FOREIGN CLAIMS SETTLEMENT COMMISSION

Mr. ROGERS. Mr. Chairman, we submitted a statement and a letter from Chairman Bell saying the Commission wished—did not feel it was necessary to take all the time to repeat everything that's in our statement, and we would submit on the record. That turned out to be a fortunate decision because, unfortunately, Chairman Bell is in the hospital today, and could not have been here if he had wanted to. But I am more than happy to answer any questions that you may have as to the workings of the Commission.

Mr. HALL. Do you wish the statement that you have prepared of Mr. Bell to be made a part of this record?

Mr. ROGERS. Yes. I would appreciate that, Mr. Chairman.

Mr. HALL. Without objection, it will be made a part of the record, the statement of J. Raymond Bell, Chairman of the Foreign Claims Settlement Commission.

[The complete statement follows:]

SUMMARY OF TESTIMONY ON BEHALF OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS OF THE HOUSE COMMITTEE ON THE JUDICIARY

The Foreign Claims Settlement Commission is a small separate agency within the Department of Justice. The Commission acts as a quasi judicial body to determine

the validity and amounts of claims by United States nationals against specific foreign governments, as authorized by statute.

The Commission is presently engaged in the investigation and determination of 2,150 claims against Czechoslovakia and the Socialist Republic of Vietnam which claims assert losses approximating \$1 billion. The Commission will continue its activities in conducting these two programs through fiscal year 1984.

In addition, the Commission will continue its function of advising the Congress and Executive agencies concerning past and potential claims programs.

Most, if not all, of the funds appropriated for the administrative expenses of the Commission are ultimately recouped by the United States Treasury from a percentage of claims funds obtained for the payment of Commission awards.

For fiscal year 1984 the Commission seeks authorization to allow it to operate at its present level of activity, increased only to the extent that uncontrollable expenses will increase.

STATEMENT OF HON. J. RAYMOND BELL, CHAIRMAN OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT RELATIONS OF THE HOUSE COMMITTEE ON THE JUDICIARY

The Foreign Claims Settlement Commission is a small quasi judicial federal agency which has been authorized over the years by specific legislation to determine claims of United States nationals for losses of property in specific foreign countries. The present Commission was created on July 1, 1954 by Reorganization Plan No. 1 of 1954 and operated as a separate Executive agency until October 1, 1980 when the Commission was transferred by Public Law 96-206 as a separate agency within the Department of Justice.

The Commission consists of a Chairman, who serves on a full time basis, and two Commissioners, who serve on a part time basis, as their services are needed. The Commissioners are assisted by a staff, presently numbering 13, which consists of attorneys, secretaries and administrative personnel.

During fiscal year 1983 and continuing throughout fiscal year 1984 the Commission is charged by statute with the adjudication of claims by United States citizens resulting from losses due to the confiscation of property by the Governments of Czechoslovakia (P.L. 97-127) and the Socialist Republic of Vietnam (P.L. 96-606). The Commission is involved in the investigation and determination of some 2,150 claims which have been filed in these two programs, asserting losses approximating \$1 billion. It is the Commission's function to determine which of these claims are valid under international law and the requirements of the statutes and, as to those claims which are valid, to determine the amount of fair compensation to which the claimant is entitled.

The importance of the Commission's role in determining these claims can be illustrated in the case of the present program to adjudicate claims against Czechoslovakia. Losses have been asserted by claimants in excess of \$425 million, however, the claims fund, established by Congress from the proceeds received from a claims settlement with Czechoslovakia, is in the amount of only \$1.5 million to be distributed among those claimants with valid claims. It is, therefore, incumbent upon the Commission to carefully determine which of the claims filed are, in fact, valid claims under international law and the directions provided in the statute, so that a fair and equitable distribution of this fund may be made. In the two current programs, as in the 40 claims programs previously completed by the Commission, Congress has set by statute certain requirements which must be met for a claim to be held compensable. These requirements require that a claim be filed within a reasonable filing period, set by the Commission, but not to exceed a period specified by statute; that the property be owned by a United States national on the date that it was confiscated by the foreign government; and that the claim arising from such confiscation be continuously owned by a United States national until the date the claim is filed with the Commission. In addition, the present program to adjudicate claims against Czechoslovakia, requires that the loss must have occurred after August 8, 1958. The Commission receives many requests from claimants, directly or through their elected Representatives, to be granted exceptions to or exemptions from these requirements. The Commission, however, receives its authority to adjudicate claims only by specific statute and does not have the power to deviate from the requirements of those statutes, no matter how sympathetic it may be to such individual requests.

In addition to the adjudication of current claim programs, the Commission each year receives thousands of inquiries concerning past and potential claim programs

and provides advice to legislative committees and other Executive departments concerning matters involving foreign claims.

In December 1982, the Commission provided testimony before the Subcommittee on Economic Policy and Trade of the Committee on Foreign Affairs of the House concerning pending legislation involving claims against Iran. The Department of State has submitted claims to the United States—Iranian Claims Tribunal on behalf of United States citizens who have asserted claims of \$250,000 or less. Some 2,600 such claims have been submitted for the laborious process of individual adjudication by the Tribunal in the Hague. The legislation anticipates the possibility of a lump sum settlement of this group of claims so that the claims could be transferred to the Foreign Claims Settlement Commission for determination. In the event that such legislation passes and an agreement is reached, the Commission would be able to effect determination of these claims at substantial costs savings and undoubtedly shorten the period for adjudication by years from that presently contemplated in the laborious proceedings before the Tribunal.

The Commission requests an authorization as part of the authorization of the Department of Justice, to enable it to continue its operation at the same level as during fiscal year 1983, increased only to the extent that uncontrollable expenses have increased.

We would call to the committee's attention the fact that the Commission is unique in that its operating expenses are only partially, if at all, ultimately borne by the United States taxpayers. In most instances the authorizing statutes have provided for the payment of the Commission's awards from funds obtained, either from the liquidation of foreign assets blocked in the United States or from funds obtained from foreign governments by negotiation of a claims settlement agreement. The statutes have provided for the deduction of a certain percentage from such claims funds for deposit as miscellaneous receipts in the United States Treasury to defray the administrative expenses of the Commission and the Department of the Treasury in carrying out the programs. The total administrative expenses of the Commission and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1981 have amounted to approximately \$26.4 million, whereas \$30 million has been recouped.

Mr. HALL. There is one interesting thing that I want to ask you about, that caught my fancy when I read this testimony. It appears that the Commission is presently engaged in investigation and determination of 2,150 claims against Czechoslovakia and Vietnam.

Are there any other countries in which any claims are being sought?

Mr. ROGERS. There has been legislation which was proposed in the last session, was not passed, and I know is about to be proposed again, as to claims against Iran. Pursuant to the accords that were reached to get the hostages out, there was a claims tribunal set up in The Hague. Individuals who had claims against Iran for more than \$250,000 file their own claims and have those arbitrated by the Commission in The Hague, with the Department of State assisting them. As to people who assert claims of less than \$250,000, those were filed by the Department of State on behalf of the claimants with the tribunal in The Hague.

Now, the problem with the tribunal in The Hague is it's a lengthy procedure. Every claim has to be looked at. They have very formal rules of evidence, et cetera. The State Department has sought, and is seeking, to see if it's possible to work out an agreement with the Iranian Government that would say, "Look, you come up with an en bloc amount of money. We will withdraw all those claims." And then the legislation would transfer those so-called small claims, under \$250,000—of which there are about 2,600—to the Foreign Claims Settlement Commission to go through, make adjudications, and therefore divide up the pot. So that is possibly on the horizon.

That is subject to two contingencies: One, legislation from Congress; and second, an agreement with the Iranians. That's probably the main one. There is—we were asked by State Department to give some information on a possible program against another country. The only problem there is, Mr. Chairman, everything I have seen is in highly classified cables, but it involves Albania, and—

Mr. HALL. Well, how do you become involved in determining these claims? Now, Czechoslovakia, what is it about that country that has made it one of the two that you are presently investigating?

Mr. ROGERS. I'll say by way of background, following World War II, as throughout Eastern Europe you got Communist governments, which started expropriating property—and much of it belonged to U.S. citizens, and that brought forth a number of claims programs involving Poland, Hungary, Bulgaria, Rumania, the German Democratic Republic, Yugoslavia, et cetera.

Now, where the Commission gets involved is where it appears that there would be a sizable number of claims by U.S. nationals against a particular government. Then the Congress comes up and—by statute—authorizes the Commission to receive these claims, make a determination as to the amount and validity of those claims.

It arises in one of two ways. Sometimes, a claim settlement has been reached between the United States and a foreign government. This was true in the case of Poland. The State Department went over and negotiated a settlement with Poland, and said, "You pay us x amount of money. We will release all claims by U.S. citizens." The Commission went through an adjudication process to, in effect, divide up that pot.

The other situation is illustrated, for example, in a program we completed about a year-and-a-half ago against East Germany. There, the Congress passed a statute saying: We know there's a number of claims outstanding. The German Democratic Republic had agreed at the time we granted recognition that they would, in the future, negotiate this issue.

So Congress then passed a statute telling the Commission to receive and determine the validity and amount. We have completed that. We have made awards of about \$78 million in principal sum and interest of another \$1,250,000. Now, it's up to State Department to negotiate a claim settlement to be turned over to Treasury. We will certify our awards to Treasury. Treasury will then make payment on those awards.

Mr. HALL. How do you classify U.S. nationals? What does that include?

Mr. ROGERS. In each statute, that is very carefully and narrowly defined by the Congress. Normally, there's two categories. One is as an individual, and the other is business entities and other types of partnerships—

Mr. HALL. Are corporations a part of the definition of a national?

Mr. ROGERS. That's correct. Because a corporation can be a claimant. Normally the definition that's given for a corporation is it must have been formed under one of the laws of the United States or Puerto Rico, and 50 percent or more than 50 percent of its stock ownership must be in the hands of U.S. nationals. For an

individual, it's almost always defined as a citizen of the United States.

Mr. HALL. Are there appropriations of property that are never brought to the attention of the Commission? I am thinking primarily of a situation in Cuba a few years ago, when Castro nationalized a plant that Texaco owned there. Some—oh, an astronomical sum as far as dollars were lost. They wrote it off, Texaco did.

Do you know whether or not companies like that ever make a claim—

Mr. ROGERS. Oh, I—

Mr. HALL [continuing]. To the Commission for—

Mr. ROGERS. Yes. In the case of Cuba, the Commission conducted a program which was finished in the early 1970's, in which we made principal awards in the amount of—I think about \$1.8 billion, against Cuba. I would be very surprised if Texaco hadn't filed in that program, because the corporate claimants tend to be aware.

Our problem on a program—one that I was very familiar with, was the one against the East German Government, the GDR. Now, many of these losses, most of the property was taken by the GDR shortly after World War II, so we're going back a lot of years. Congress authorized us to consider a program. We had 1 year to receive claims. Now, the challenge we face is this: Here we are in Washington. We know there's a program. We know out around the United States are thousands of people who have claims. How do we get the word to them?

Well, the statute says publish in the Federal Register. That probably notifies some of the corporate claimants who follow that. So, essentially, you sit down—in that program we sent—I went through and got a list of the 250 newspapers in the United States, anything that is more than 50,000. We sent three different press releases to them over the period of it.

The problem is, of course, you can send a press release, but you can't make the paper print it. You tend to get publicity in the smaller papers. They are looking for some filler.

Then we tried to—we issued an award that had some kind of interesting things. It was a chap whose property had first been taken by the Nazis, and he got it back after the war, and then the GDR took it. So we tried to write this up so it would be a little feature, newsworthy, and see if that might get published.

Then you go through and try and see are there any ethnic communities. All right, in the German program, we went through—there are 200 radio stations in the United States who do some part of their broadcast week in the German language. So of course we contacted all of them and asked for public service announcements. You look through for the German-speaking press.

A number of the claimants in that program, we knew, would be former German citizens who were Jewish who had come to the United States, so we went through Jewish organizations.

In the final analysis, I get the phone books from every major city and I sit down under that and look under the "G"s, or anything that says "German American," anything that says "Jewish," anything that says—anything that looks like an organization, and send notices out to them. We of course send notices to each Member of

Congress, and particularly to district offices. Some Congressmen have put it like in a newsletter, et cetera.

So you sit down, you think of everything you can try and publicize the thing. The only thing you absolutely know is that it's going to be impossible and there's going to be some people that will not hear of the program.

Mr. HALL. I notice in the statement, page 3, that Congress has set by statute certain requirements which must be met for a claim to be held compensable. These requirements require that a claim be filed within a reasonable filing period set by the Commission, but not to exceed a period specified by statute. Is there any period of time set by the Commission within which a national must file a claim?

Mr. ROGERS. Yes. The way the—

Mr. HALL. What is that length of time?

Mr. ROGERS. All right. The way the statute normally will read is that within a certain time after the passage of the statute, or after a supplemental appropriation to carry out the program, the Commission will publish in the Federal Register and start the filing period.

Statutes normally say that the Commission will set the filing period but that it shall not exceed—the usual time is 1 year.

In the programing into Vietnam, a 2-year outside period was put in the statute. That was for a particular reason. When that statute was first being considered by Congress, we were heavily engaged in the GDR program. And so, they felt they might be passing it quite soon, so they said: "Well, let's give you up to 2 years. Then if we do pass it early, you can take the full 2 years, finish your GDR program, move into this." As it turned out, the statute was delayed about a year before it came in, and so we picked a period that was somewhat less than the 2 years.

The usual period is a year, and normally the Commission takes—sets the full year period.

Mr. HALL. Well, these Czechoslovakian claims that you are working on now, when did those claims originate?

Mr. ROGERS. By way of background, in 1958, under title IV of the International Claims Settlement Act, Congress authorized the Commission to adjudicate claims by U.S. nationals against Czechoslovakia for losses that arose from January 1, 1945, and the date of that statute, which happened to be August 8, 1958.

Then, as you may recall, a year ago the United States, after subsequent negotiations, finally made a claim settlement with Czechoslovakia, which they agreed to pay an additional \$81.5 million to the United States. Most of that money will be distributed to individuals who hold awards from the Commission in the previous program. But it was recognized—

Mr. HALL. Are you still seeking people to share in that \$81 million settlement?

Mr. ROGERS. Yes, to this extent, Mr. Chairman: Those people whose property may have been taken after August 8, 1958, would not have been in the previous program, because it occurred after that program. And they would have had no opportunity to have their claim adjudicated. So Congress then authorized the Commission to conduct a second Czech program to consider any claims

which arose after August 8, 1958, up to the date of the settlement agreement. That's the one we are presently involved in.

Mr. HALL. I'm not questioning what you are doing. My thought is, if \$81 million has been paid in by Czechoslovakia, as a settlement of some kind, is it a fair statement to say that a portion of these 2,150 claims that you have listed here on your statement will be applied against that \$81.5 million.

Mr. ROGERS. That's correct. The Congress divided the \$81.5 million up into several funds. One was \$74.55 million, which is to be disbursed to those people who already held awards; \$50,000 was paid over to the U.S. Treasury. A fund of \$5.4 million was set up as an ex gratia fund made up principally of approximately \$4 million that otherwise would have gone to the Treasury to reimburse the U.S. Government for previous expenses of the Commission.

Mr. HALL. Any claims that have not been adjudicated now, then it's too late for someone to make a claim now and have it adjudicated to go against this fund?

Mr. ROGERS. It is too late now, if they have not filed with us. The remaining claims after 1958, which will be paid out of a fund of \$1.5 million, which is in addition to interest, so it will probably be about \$2 million when disbursed—our filing deadline on that program ran on October 31 last year.

Mr. HALL. Well, how does that fit with your 2-year claim—your 2-year statute of limitations? If they haven't filed a claim within 2 years, they are barred by statute, if I understood your testimony correctly earlier.

Mr. ROGERS. No. When the program—when Congress authorizes the program, then we open up a period for filing claims. Now, that period may be years and years after the loss occurred, depends on the type of program. That filing period—it's not really like a statute of limitations. It merely says that if you have a claim, you must file it with the Commission within this period. And then the Commission—

Mr. HALL. What period?

Mr. ROGERS. Normally 1 year.

Mr. HALL. Suppose they don't?

Mr. ROGERS. Then the claim would be barred as a late-filed claim.

Mr. HALL. Suppose people now file claims claiming Czechoslovakian takeovers—

Mr. ROGERS. Right.

Mr. HALL [continuing]. Against this \$81 million, and that it occurred prior to either August 1958 or prior to January 1945. Are they going to be considered now as filing a claim against this \$81 million, as—

Mr. ROGERS. No.

Mr. HALL [continuing]. Divided up as you—

Mr. ROGERS. No, they would not.

Mr. HALL. They would have no claim in that.

Mr. ROGERS. If their loss occurred before 1958, the reason would be that that should have been in the previous program, and we have no authority to reopen those claims. And if it's a loss that occurred after August 1958, then it is under the program we are pres-

ently working on, but the filing deadline in that program has now run out.

Mr. HALL. If we reauthorize the Settlement Commission for another fiscal year—

Mr. ROGERS. That's right.

Mr. HALL [continuing]. Do you reopen the time for people to file claims—

Mr. ROGERS. No. No.

Mr. HALL. Against this \$81 million?

Mr. ROGERS. No, because the statute does something else. It says the Commission must completely wind up its affairs on this Czech program within 2 years of the filing deadline.

Mr. HALL. Within 2 years of the filing deadline.

Mr. ROGERS. That's right. We must, after the claims have been filed—and claims tend to come in to the Commission, no matter how much you urge people to file early, they tend to come in at the end of the filing period.

Now, the Commission is in the process of trying to get evidence, trying to get information, trying to review these claims, to determine their validity and their amounts. Under the agreement that was reached with Czechoslovakia, we—by "we," I mean the Department of State on behalf of the United States—urged, and finally got an agreement, that upon official request from the United States, the Czechoslovakian Government would give certain information as to what their land records showed as to ownership, when property had been nationalized.

This is a problem for many claimants, because they say, "Well, it's there. I don't know what happened to it. And I can't get information from the Czechoslovakian Government." We have, therefore—one of our first jobs, is try to get through all the claims, to get all those requests out to the Czechoslovakian Government, to give them as long an opportunity as possible to get responses back.

We are now in the process—having reviewed all the claims, gotten out letters to claimants, gotten our request to Czechoslovakia—we are now starting the process of adjudication, making determinations as to whether this is a valid claim under international law and under the requirements of the statute.

Mr. HALL. In other words, you have \$81 million which you already received from Czechoslovakia?

Mr. ROGERS. That's right.

Mr. HALL. And you are now working among the claimants who have filed within the statutory time—

Mr. ROGERS. That's true.

Mr. HALL [continuing]. As to whether or not they have a claim that can be paid out of this \$81 million.

Mr. ROGERS. Yes. As to these claims after 1958. Now, the bulk of the claims were all completed by the Commission 20 years ago in the first program. That's all claims that arose before August 8, 1958.

Treasury has disbursed the \$74.55 million set aside from the \$81 million, and I think they are about 90 percent through with the disbursing of those funds. We are in the process of determining the validity of claims that arose after that program, so that they can

participate in that part of the \$81 million which has been set aside to be distributed to them.

Mr. HALL. How many claims did you adjudicate in fiscal 1982?

Mr. ROGERS. Let me see. Fiscal 1982 runs from October 1982 through September 1983. We had approximately 120 so-called Benes claims. As part of the Czechoslovakian Claims Settlement Act of 1981, in addition to these claims that arose after August 8, 1958, the Congress set up an ex gratia fund, and instructed the Commission to reopen certain claims that had been previously adjudicated in the first Czechoslovak program.

Without going into overdetail, this had to do with the question of when property had been taken in Czechoslovakia, whether it was taken at the date that a decree nationalized the property in 1945, or was it deemed to have been taken in 1948 or after when a Communist government said that they would not pay compensation for it.

The Commission had determined that the earlier one was the date of taking. Therefore, claimants whose property was taken in 1945 who were not yet U.S. citizens had their claims denied. At that time, they argued strenuously that the Commission should have used a 1948 date as the date of taking, and they had become U.S. citizens by that date.

This group, who were generally referred to as the Benes claimants, which was after Edvard Benes, who was the original President of Czechoslovakia right after the war, who had issued the nationalization decrees, presented to the Congress and ultimately this fund was set up as an ex gratia fund that was taken from the \$81.5 million, and the Commission was asked to reopen and redetermine those claims.

We put our first emphasis on those, because there was immediately available money as soon as we had made those determinations. There were about 150 claimants involved, and roughly 100 decisions that were issued. Those we issued, certain objections were filed, and in fact we had final hearings on objections 2 weeks ago. We have now issued all final decisions, and we are actually right in the process now of rechecking them so we can certify those over to the Department of Treasury so that money can be distributed on those accounts.

Mr. HALL. How many decisions did you enter in fiscal 1982?

Mr. ROGERS. Approximately 100.

Mr. HALL. How long does it take to adjudicate a claim after you have already received \$81 million, and said sum has been paid in to the Treasury? How long does it take to adjudicate a claim?

Mr. ROGERS. That varies so much with the claim. There is always a process in a program, as the claims come in. Now, some claims you can look at, and you can adjudicate immediately, a little bit like in a court proceeding—a demurrer—assuming everything on the claim form is absolutely true: This claim is outside the statute and is not a valid claim. That, of course, could be adjudicated immediately, with a denial.

Now, of course, we always write to the claimant to tell them what the problem is and is there any other information. When we look through a claim form and we see that, yes, if what the claimant says in here can be established, it appears there may be a valid

claim, then you start a process which our staff goes through of trying to see if we can get the necessary information in to validate it.

In hardly any case does a claimant send in a claim which has sufficient documentation, evidence, or even information to clearly say we could adjudicate it upon receipt. So the steps we take are writing back to the claimants, trying to point out again what the elements are, making suggestions of the type of information they may have. It's often difficult.

I try to get my staff not to write to some member of the public and say, "Well, do you have any evidence, or documents?" because that conjures up this concept of a formal document. We may be interested in a letter that's up in that person's trunk from a former neighbor in Czechoslovakia, written years ago, full of chitchat, but also says, "And by the way, you should see what happened to your house now that the Government's taken it over and made a nursery school." Well, you would never get that into a court of law, but the Commission would give quite good weight on here.

Here is a letter by a neighbor—there is no concept of claim or any such thing. So we try and—not knowing what the claimant may have, but make the suggestions of the type of thing that they might have that would be very useful to us.

Mr. HALL. Are these people usually represented by attorneys?

Mr. ROGERS. The majority are not. It is totally up to them whether they wish to be or not.

Then, of course, here—then we try with a request to Czechoslovakia. We start a process—because sometimes one claimant may have some pretty good information which could actually be used in other claims. It tells us what happened on a certain street in a certain town. Well, sometimes that information which claimant A may have good documentation on, look through and we can find some other claimants we can use that with.

So this process goes on. Then we issue a proposed decision. When I say "we," the staff puts together a proposed decision. This is submitted to the three Commissioners. Then it's issued as a proposed decision. That is sent to the claimant. The claimant has 30 days. If the claimant looks at it and thinks it's hunky-dory, does nothing, it becomes a final decision.

We also lay out to the claimant what their rights are to object. They may either object by writing a letter, sending other documents, affidavits, what have you, in which case the Commission will totally relook at it; or, again at their option, they may have an oral hearing before the Commission, come again, with or without an attorney, their option, put on testimony, make any argument, submit any additional documents, anything that they may wish to, and then the Commission again relooks at the whole matter and issues a final decision.

Mr. HALL. Is that appealable to the courts?

Mr. ROGERS. No; it is not.

We do have our own provisions if—even after it's final—if anyone discovers new evidence, we allow a petition to reopen, up until the final date of the program, which is mandated by the statute. Then we lose jurisdiction to handle the matter.

Mr. HALL. I call your attention to the last page of your statement. Page 5.

The total administrative expenses of the Commission and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1981 have amounted to approximately \$26.4 million, whereas \$30 million has been recouped.

Now, does that mean that \$30 million has been paid to the Treasury of the United States?

Mr. ROGERS. That's correct. It should be clarified that that is to cover not only the expenses of the Foreign Claims Settlement Commission, but also the expenses of that bureau of the Department of Treasury that issues the check and makes the distributions.

Mr. HALL. I notice further in this statement that a percentage of the claims that are adjudicated, a percentage of that money goes into the Treasury. Is that what this \$30 million represents.

Mr. ROGERS. That's correct.

Mr. HALL. That brings up this question that Mr. Shattuck and I were talking about a few days ago. What is the the percentage that is paid to the Government out of every claim that's adjudicated? Is it a third, or one-twelfth, or a quarter of that—how do you arrive at this \$30 million?

Mr. ROGERS. OK. Each statute for each program puts in the percentage. Years ago, I believe it was set at about 3 percent. Shortly thereafter, it was increased to 5 percent, and has remained as 5 percent in the various statutes that have succeeded it.

In the case of Czechoslovakia, the 5 percent of the most recent settlement would have been a little over \$4 million. Because of this problem with the so-called Benes claims that I mentioned before—

Mr. HALL. What kind of claim is that?

Mr. ROGERS. That's those that we were supposed to redetermine.

Mr. HALL. All right.

Mr. ROGERS. And the Congress said: Well, instead of putting this money into the U.S. Treasury, let's put that into a separate fund called an ex gratia fund, and allow a redetermination of those claims.

But in all programs—well, in the last 20 years, it's been 5 percent.

Mr. HALL. Is that a sufficient sum to adequately compensate the Treasury?

Mr. ROGERS. I believe it is. The compensation, of course, always comes later. In other words, at the present time, the Commission has completed a 4-year program involving claims against East Germany. Now, the State Department is in the process of trying to negotiate a settlement. Some day, when they make a settlement, then money will be paid into the Treasury, which of course will—reimbursing for money that the Commission spent in years past when we did the adjudication.

So the reimbursement generally comes later. There is some upcoming reimbursement immediately with the settlement with China. There's about \$10 million that is paid in, I think, two more installments on that. Out of each one—what is it?—\$500,000 will go into the Treasury as reimbursement on this.

Mr. HALL. You indicate that in your Czechoslovakian losses, they "have been asserted by claimants in excess of \$425 million; however, the claims fund, established by Congress from the proceeds received from a claims settlement with Czechoslovakia, is in the amount of only \$1.5 million to be distributed among those claimants with valid claims."

This claims fund that is established by Congress, explain that to me.

Mr. ROGERS. All right. Out of the total of \$81.5 million that was paid by the Government of Czechoslovakia, the Congress then divided that up into separate funds. One fund they set up was \$1.5 million to be used for claimants who had claims arising after August 8, 1958. The bulk of that \$81.5 million went into a fund of \$74.55 million to pay the people who already had an award—that is also invested, so probably will be about \$2 million by the time that it's actually disbursed.

Mr. HALL. Mr. Bell notes in his statement that receipts deducted from foreign funds held in the U.S. Treasury pending settlement of these claims have more than met the cost to your Commission. Will there be sufficient receipts to continue to cover the costs of your agency for 1984 and into the future?

Mr. ROGERS. I touched on that briefly a moment ago, and I was also pointing out that they come in the future. There are presently about a million dollars that will come in from further payments that are already committed, on the China claims fund.

When there is negotiation with the German Democratic Republic, whatever the State Department is able to achieve by way of a settlement fund, 5 percent of that will go in. Of course, that's contingent, because we don't know when they can reach agreement or how much they will get.

There is, of course, the large number of awards that are outstanding against Cuba. At such time as there is a settlement with Cuba, again, a percentage of that would go into the Treasury to reimburse expenses.

Mr. HALL. Are you working on a settlement with Cuba at this time?

Mr. ROGERS. When it comes to that, that's totally handled by the Department of State. We get involved with the adjudication of the claims, and then, because it involves government-to-government negotiations, that's always handled by the Department of State. They normally keep us informed, and I am not aware of any contacts with Cuba.

Mr. HALL. Your 1984 budget request is \$152,000 in excess of your 1983 budget. This increase is attributed to uncontrollable expenses. I believe that they are itemized on page 10 of our briefing document.

Mr. ROGERS. That's correct.

Mr. HALL. I would appreciate it if you would explain the two largest increases, \$126,000 for standard level user charges and \$8,000 for general pricing level adjustments.

Mr. ROGERS. The standard level user charges is essentially what is billed to us by the Department of Justice for our space, and they have a formula, and they say, "This is what we anticipate we will be billing you for this space, utilities, et cetera." And as Justice

does our administrative services, we are not really in a position to go to them and say, "No, you're wrong. That's not what you're going to bill."

I think it's a little bit almost like the landlord and tenant. They say, "This is what we're going to charge you for rent." If they don't charge that, that certainly, of course, is fine with us.

The \$8 million is strictly applying OMB's inflationary estimates to certain charges such as travel and the like, to account for inflation. And again, that's their guidelines, estimating what they think the inflationary impact may be on those elements.

Mr. HALL. I understand your Commission is autonomous and that your tie to the Department of Justice is solely for administrative efficiency. Would you describe what services the Department provides for the Commission? Have you found this arrangement to be satisfactory? Has there, in fact, been a savings realized as a result of your transfer to the Department of Justice?

Mr. ROGERS. Essentially, the services that are provided to us by Justice are the same level of services that we used to contract with GSA with, when we were an independent agency.

One of the principal ones is keeping track of the payroll, writing the checks, and keeping the computer records on that. And just the wide range of procurement and the like. We send a request over and they essentially do the paperwork, which finally produces the procurement.

I suppose that whenever one works with a large agency, whether it's GSA, Justice, et cetera, there is always this request or that request which you feel was too slow in processing, but I think in general the services have been adequate.

Whether it's cost-effective is very difficult to say. We could pinpoint before, because when we were an independent agency we would contract with GSA and say, "We will pay you x amount of money and you do these services." I have no doubt that additional services which are provided to the Commission are in some way reflected in the Justice Department budget as to what they need for their administrative services, but it is very difficult to point and say, it's costing them this more or that amount. We used to pay, I think, about, oh, in the neighborhood of \$20,000 to GSA to do our basic paperwork.

Mr. HALL. How many people do you have now working?

Mr. ROGERS. We had 18 slots. Actually, we have 14 that are actually filled right at this moment.

Mr. HALL. Will this increase add any additional personnel?

Mr. ROGERS. I think it may as we move into further aspects of the Czech program, and also, there's always the difficulty that we know there is legislation pending, which I mentioned, which might suddenly drop 2,800 fairly complicated Iranian claims on our lap, with money available, and we try to manage resources so that if that suddenly does come, we can try and make some shifts, go up to the full level, and delay some other material, rather than just saying: Well, gee, fine. We have got the program. There's money available, but we have to wait till next year till we can get a new appropriation on it.

This, of course, occurred with this Czechoslovak program. That, of course, was—in no way could have been anticipated in budget

and authorizations, and then suddenly in fairly short order it was passed with requirements to immediately start with it. So again, we had to sort of adjust, string some other stuff out, cancel some other things, at least for the future, and try and adjust.

There is always a problem when you work with a very small staff. We have five attorneys including myself. Therefore, a shift of one attorney is changing my legal staff by 25 percent. If you have 100 attorneys, you can fine tune.

Mr. HALL. Where is your office? Where are the offices located?

Mr. ROGERS. 20th and L Street, NW. It's in the Vanguard Building, up on the fourth floor.

Mr. HALL. Now, I notice in the—some of the information in the back of the exhibit that's here today that you have expenses for people who are overseas at various and sundry times, moving expenses. How many people at any one time do you have in areas—

Mr. ROGERS. We have none at the present time. That authorization was put in there—in the program involving the German Democratic Republic, we had three German employees in an office in Munich who were getting information from West Germany which was indispensable to our doing claims against East Germany. We also had an agreement—at that time, we were separate from Justice, and it was a Justice Department attorney, Mr. Charig, was over in the Consulate's Office, so we made a deal with Justice that we would reimburse them—I think it was for 40 percent of his salary and expenses, and he would help oversee this other group.

In the Polish program, there were actual Commission employees that were overseas. We have none overseas at the present time. I don't anticipate any in the next year or so, but again, if suddenly a program comes—actually, in our transfer legislation, specifically it was put in that we were authorized to use overseas staff if necessary.

Mr. HALL. Thank you, Mr. Rogers.

The gentleman from Massachusetts, Mr. Frank?

[Discussion off the record.]

Mr. HALL. Does staff have any questions they would like to ask?

Mr. McMAHON. Thank you, Mr. Chairman. In your annual report for 1981, you indicate that there has been much criticism of the principle of international law that one has to be an American citizen for you to entertain that claim against another country.

Mr. ROGERS. Yes, sir.

Mr. McMAHON. And you also indicate that legal scholars, international legal scholars, have criticized this rigid principle because stateless persons, persecuted persons, and refugees, even though their land has been confiscated, have no recourse at all.

Do you think that you could support some sort of legislation or change in policy which would permit the Foreign Claims Settlement Commission to entertain these claims?

Mr. ROGERS. Let me answer that this way. First off, the Commission is happy to follow any of the game rules that Congress puts forth in a statute.

It gets a little "iffy" as to whether the Commission would actually support a particular bill changing those rules. Although we have pointed out that there has been criticism, I think it is also true

that the basic weight of authority at the present time is still with the requirement of citizenship. Certainly I know State Department feels very strongly about that, and as of December 1981 the Congress again stated that that was the policy.

The traditional international law theory on this is this: That the actual claim that's being asserted is not Mr. Jones' claim; it is a claim by the United States of America against a foreign sovereign. The reason the United States of America has a claim is because it was injured. It was injured because its citizen was injured. Therefore, if it's a citizen of France that is—whose property is taken, the United States of America does not suffer an injury itself.

What's happened, of course, is since World War II, we have new phenomena. We have large groups of refugees. This wasn't true before World War II. The problem didn't arise that much, when much of this legal thinking went on. And you have had the rise of Socialist and Communist governments who have nationalized property. These two elements coming together have provided a large group of people who for practical matter do not have recourse to a claims program. One of the problems that arises is that there is a very large group—on this Czechoslovak program, I receive many letters from one group which has been almost completely left out. And these are the so-called Sudeten Germans. These were ethnic Germans that were living in Czechoslovakia. This, as you may recall your history, was the excuse Hitler used for Munich and for wanting to move into the Sudetenland. Soon as the war was over, the Czechs said to the Sudeten Germans, "Out." I mean literally moved them out.

Now, a number of those did come to the United States, and with the passage of time became U.S. citizens. But property, of course, was expropriated by the Czechoslovak Government immediately when they were expelled. This is a very large group of people, and of course, they write and say, "Wait a minute. I am an American citizen. Why isn't my Government doing anything for me?"

Well, the answer being, at the time that this wrong occurred, it was the Government of Czechoslovakia committing a wrong, to the extent it was a wrong, against Czechoslovak citizens, and the fact that you ultimately acquired U.S. citizenship does not put the United States in a position to assert for that claim. Where the issue does get difficult, and we had some in the GDR program, is the person who has no citizenship, because normally it's said, "Well, look to the country of which you were a citizen at the time to assert your claim." Then along comes a fellow that says, "Well, my citizenship was stripped. I had none." And the arguments that have been made, however, do not open this door very wide.

What they say is that there could be a situation where a person is a permanent resident of the United States; as such, pays taxes to the United States; as such is subject to the military draft; has filed for his papers, is in the process of becoming a citizen—that that provides enough connection to the United States that the United States should be in a position to say it has been injured if this individual has been injured, even though not technically a citizen.

Mr. HALL. Well, has the United States accepted—

Mr. ROGERS. We have not. And the State Department has strongly opposed and in the Czechoslovak program—

Mr. HALL. In other words, you're taking the position now that a person must have been a citizen of the United States——

Mr. ROGERS. That is certainly the——

Mr. HALL [continuing]. When the appropriation took place, in order to file a claim?

Mr. ROGERS. That is certainly the position of the United States.

Mr. McMAHON. Don't you think that it might be more enlightened to use the grouping of contacts or affiliation like permanent resident alien seeking American citizenship, because it seems to me that the process of citizenship is more or less a technical process that can be changed by law. We could change the 5-year status down to a 1-year status, or 6-month status.

Mr. ROGERS. Or if it snows on the day the person was supposed to be sworn in, they're—oh. Well, let me answer this question saying, as a strictly personal opinion, I think there is a very strong argument that way. Obviously, I am not in the position on behalf of Foreign Claims Settlement Commission to speak as to what our position would be on future legislation——

Mr. HALL. You have to operate strictly by statute, as you stated it——

Mr. ROGERS. That's absolutely correct.

Mr. HALL [continuing]. So that even though it may be heart-rending and all——

Mr. ROGERS. That's correct.

Mr. HALL. You still must follow the statute——

Mr. ROGERS. That's correct.

Mr. HALL [continuing]. As it is now written by the Congress.

Any further questions?

Mr. McMAHON. Can I ask one more, Mr. Chairman?

Mr. HALL. Yes.

Mr. McMAHON. This is a followup to what the chairman was addressing earlier. In the event that the people that may be eligible have not filed their claims, and you do end up with a residue of funds, what happens to that residue? Does that go back to the foreign country? Does it go to the U.S. Treasury, by, let's say, escheat? Or what?

Mr. ROGERS. It only happened once in history, and that was in an Italian program, and what happened in that program is the Congress passed additional legislation and said, "Consider all the late claims that were filed, and consider anybody who became a U.S. citizen at the date of filing the claim." We did that, distributed the money, it still wasn't all used up, and that was the—I think that went to the U.S. Government, because Italy had paid—this was a program having to do with losses in World War II occurring outside of Italy at the hands of Italian forces.

The problem is never that way. It's always that either there's inadequate funds, or almost certainly there will be. This puts the Commission in the position that we do not consider ourselves adverse to any claimant. We are there to make awards. We are there to help a claimant. But, we also have a duty to every other claimant who has a legitimate claim to be sure that our award is not given unless this claimant has established it, because undoubtedly there will be a pot that will be divided up with less than 100 cents on the dollar going, and if we make an award to this person that's

not supportable, not within the statute, or unreasonable amount, means that everyone else with an award is going to get that much less. So, right.

Mr. McMAHON. In your testimony you state that two of the commissioners serve on a part-time basis. Where else do these commissioners serve, to insure that they don't represent a conflict of interest in an impartial determination of those claims?

Mr. ROGERS. That's a good question. The—I will get to a specific answer, but with the reorganization bill, they changed the role of the commissioners. It used to be, up until 3 years ago, there were three full-time commissioners. The problem was, that meant, in our programs, the life of our programs, there's times when we use commissioners a lot and times that we don't need commissioners.

By that, I mean, as a filing period—as the claims are coming in, there aren't any things to submit to the commissioners. Staff is busy.

So the argument was, why pay a full salary to three people who for long periods have very little work to do? And the answer that was suggested was have a full-time chairman, have two part-time individuals who will come serve at the pleasure of the chairman. Makes sense, but creates another problem.

You now have a job to offer to someone which during a year which might pay nothing, or, at the present time, might pay \$63,800, depending on how much the person is used. There's not too many individuals out there that can accept that offer, saying, "Hey, I'd be happy to take the job that may pay me some undisclosed amount between those figures."

Where the—both the last and this administration has gone is to members of the bar who are still either partially or fully practicing. They have the flexibility to meet our meetings, et cetera. But then that raises the problem of any possible conflict of interest.

Now, there's no difficulty with actual conflict. Each one has given me a list of every company they have any stock in, et cetera, and if any of those companies should file a claim with the Commission, we would immediately exclude that one.

But it does bring up a lot of questions because we are now part of the Department of Justice. For example, one of the commissioners is—has a law firm in Las Vegas. Now, he must—and I keep track—work less than 60 days out of any consecutive 365. If he should not, then neither he nor any member of his firm may deal with the Department of Justice. Well, obviously, you can't do business in this town if you can't deal with Department of Justice. Now, that problem is not there when we were a separate agency, because what the prohibition is is dealing with the agency. Well, there would be very little cause to deal with the Foreign Claims Settlement Commission, but now that's it is Justice.

So, where we solved one problem, by saving money, we do create one which I think we can prevent either conflict of interest or any conceivable perception of conflict of interest, but it does require being very much aware of what we are doing.

Mr. SHATTUCK. Just one question. In previous appearances, you had a program or perhaps two programs that were going to be undertaken. As I understand your testimony, there is just one program in the offing, and that is the Iranian program.

Mr. ROGERS. That's correct; yes. We have—at the present time, of course, we have two programs that are ongoing, Vietnam and Czechoslovakia. Iran is a possible one that might come up.

Mr. SHATTUCK. Thank you.

Mr. HALL. Thank you very much for your testimony. This subcommittee stands adjourned.

Mr. ROGERS. Thank you, Mr. Chairman.

[Whereupon, at 10:29 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

U.S. DEPARTMENT OF JUSTICE,
FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES,
Washington, D.C., February 24, 1983.

Hon. SAM B. HALL, Jr.,
Cannon House Office Building,
Washington, D.C.

DEAR MR. HALL: I appreciate the courtesy you extended to me and the interest you displayed in the operation of the Foreign Claims Settlement Commission at yesterday's oversight hearing. At the hearing, we touched briefly on claims against Cuba and you mentioned a substantial loss which has been suffered in that country by the Texaco Company.

I, therefore, checked out the decisions issued by the Commission in its program to adjudicate losses occurring in Cuba. The Commission issued a decision in 1970 which determined that Texaco Inc., and two of its subsidiaries, Texas Petroleum Company and Texaco Export Inc., suffered losses in the principal amount of \$56,196,422 as the result of the expropriation of property in Cuba. In addition, the Commission awarded interest at six percent from the date of the expropriation, which was in 1960.

This decision illustrates the limited role of the Commission in the process of attempting to obtain compensation for American claimants. What Texaco presently has is a proposed and final decision from the Commission constituting some eighteen pages of legal and factual discussion ending in a certification of loss in the amount above mentioned. It does not provide the Texaco Company with any compensation for their loss. It is part of over \$1.8 billion in total losses suffered by American claimants, as determined by the Commission. Funds to provide payment for these losses must come from the Government of Cuba in a claims settlement to be reached some time in the future as a result of negotiations between the United States and the Government of Cuba. Such negotiations would be carried out by the State Department.

At this particular time, I suspect the prospect of a claims settlement is not promising for two reasons. To the best of my knowledge, our relations with Cuba remain "strained," to put it mildly. In addition, even if Mr. Castro should suddenly decide to meet his obligations, I would think it very doubtful that he could come up with \$1.8 billion in United States dollars or anything close thereto.

This raises the question of why the Congress directed the Commission to go to the effort to adjudicate these claims in the first place, if the prospect of payment appears to be distant, at best. I think the answer lies in the fact that relations between governments do change. For example, in 1966, the Congress also authorized the Commission to adjudicate claims against the government of communist China. At that time, the possibility of the Chinese communists agreeing to pay such claims appeared to be almost nonexistent. However, in 1979, this relationship did change and the Chinese communist government agreed to, and is paying, a total of some \$80 million which is being distributed to award holders. The United States has also been consistent that, before establishing normal relations, including trade relations with a government such as Cuba, some accommodation must be made on the claims issue.

This being true, the time to determine these claims is as soon after the expropriations as possible when claimants have records and while the individuals who were personally involved are still alive to give information. In some programs, such as that against East Germany, the Commission was authorized to adjudicate claims which had arisen 30 to 40 years earlier, which makes it very difficult, both for the Commission and claimants, to endeavor to reconstruct and establish what may actually have happened.

I apologize for the length of this letter, but thought you might be interested in the situation concerning Texaco and how this does illustrate to some extent the difficul-

ties presented in the process by which the United States seeks at least some measure of compensation for its citizens who have suffered losses at the hands of foreign governments.

Very truly yours,

DAVID H. ROGERS, *General Counsel.*

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